

REMARKS

The Final Rejection dated July 14, 2004, has been carefully considered. In response thereto, the application has been amended in a manner which is believed to place it into condition for allowance. Accordingly, reconsideration and withdrawal of the Final Rejection and allowance of the pending claims are respectfully solicited in view of the foregoing amendments and the following remarks.

Claims 1-10, 12 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Oberrecht et al* (U.S. Patent No. 5,605,182). Claims 1-10, 12 and 13 also stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Janning et al* (U.S. Patent No. 6,446,049 B1). Claims 4 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Oberrecht et al*. For the reasons set forth below, the Applicant respectfully submits that the claims as amended overcome those grounds of rejection.

Claim 1 recites, *inter alia*, a controller adapted to read information from a tag connected to a vehicle when the vehicle is detected by at least one vehicle presence detector and is in proximity to an antenna corresponding to the detector. Similarly, claim 2 recites, *inter alia*, a controller adapted to receive a detection notification from a first vehicle presence detector, the first vehicle presence detector being associated with a first dispenser, and to activate a first antenna in response to the notification. Neither of the applied references teaches or suggests such a controller, nor would the use of such a controller have been obvious to a person having ordinary skill in the art who had reviewed the applied references.

In that regard, the Final Rejection alleges that “[t]he manner in which a machine is to be utilized is not germane to the issue of patentability of the machine itself.” In support of that proposition, the Final Rejection cites a case from 1967 concerning the patentability of a tape dispensing machine which differed from the prior art only in that it was being used to dispense adhesive tape. The tape dispensing machine, being a simple mechanical device, was not and could not be programmed to perform a desired function.

By contrast, the controller in the present claimed invention is a computing device which can be programmed to perform the functions recited in the claims. Cases since that cited in the Final Rejection have consistently held that for the purpose of claim interpretation, a controller programmed to function in a certain way is a different structure from a controller which is not programmed to function in that way. For example, in *Personalized Media Communications LLC v. ITC*, 48 U.S.P.Q.2d 1880, 1890-91 (Fed. Cir. 1998), the Federal Circuit held that for the purpose of claim interpretation, a controller programmed in one way is a different controller from a controller programmed in a different way. In other words, the manner in which the controller is programmed must be treated as a claim limitation and must be given weight in interpreting the scope of the claim.

The present claimed invention falls within the holding of *Personalized Media Communications* and is both legally and factually distinguishable from the tape dispenser of *Casey*. Accordingly, the claims recitations regarding the controller must be given weight in construing the claims. Once they are, it will be seen that neither of the applied references anticipates a system comprising such a controller.

The Final Rejection also reiterates the argument regarding the Applicant's ability to be his own lexicographer. That argument is internally inconsistent. The Final Rejection cites case law to the effect that the claims must be interpreted with their broadest reasonable interpretation, but at the same time, the Final Rejection cherry-picks among dictionary definitions of the word "controller" to give that word an artificially narrow meaning.

In response, the applicant respectfully submits that if the Final Rejection arbitrarily excludes common definitions of the word "controller," the Final Rejection is not giving that word its broadest possible interpretation. Therefore, the Applicant respectfully submits that once the claim limitations directed to the controller are construed correctly, neither of the applied references anticipates the claimed invention.

Moreover, the claims include limitations directed to vehicle presence detectors. The Final Rejection does not identify where in the applied references such vehicle presence detectors can be found, nor does the Applicant find them. Therefore, the vehicle presence detectors provide an independent basis for non-anticipation of the present claimed invention by either of the applied references.

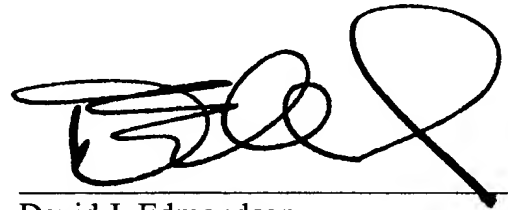
Finally, with regard to claims 4 and 8, the allegedly admitted prior art does not overcome the above-noted deficiencies of *Oberrecht*. Therefore, the Applicant respectfully submits that the subject matter of claims 4 and 8 would not have been obvious over *Oberrecht* in view of the allegedly admitted prior art.

In light of the above, the Applicant respectfully submits that the application as amended is in condition for allowance. Notice of such allowance is earnestly solicited.

If there remain any issues that can be overcome most easily through a telephonic interview, the Examiner is invited to telephone the undersigned at the telephone number set forth below.

Please charge any deficiency in fees, or credit any overpayment thereof, to BLANK ROME LLP, Deposit Account No. 23-2185 (114944-00106). If an extension of time is required to render this Amendment timely and either is not filed concurrently herewith or is insufficient to render this Amendment timely, the Applicant hereby petitions under 37 C.F.R. § 1.136(a) for such an extension for as many months as are required to render this Amendment timely. Any fee due is authorized above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Edmondson', written over a horizontal line.

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